1 2 UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN 3 4 Case No.: LISA WALKER, 5 6 Plaintiff, v. 7 SYNCHRONY BANK, **JURY TRIAL DEMANDED** 8 9 Defendant. 10 11 **COMPLAINT** 12 LISA WALKER ("Plaintiff"), by and through her attorneys, KIMMEL & 13 SILVERMAN, P.C., alleges the following against SYNCHRONY BANK 14 15 ("DEFENDANT"): 16 **INTRODUCTION** 17 18 Plaintiff's Complaint is based on the Telephone Consumer Protection 1. 19 Act, 47 U.S.C. §227. 20 JURISDICTION AND VENUE 21 22 2. Jurisdiction of this Court arises under 28 U.S.C. § 1331. See Mims v. 23 Arrow Fin. Services, LLC, 132 S. Ct. 740, 747, 181 L. Ed. 2d 881 (2012). 24 25 26 27 - 1 -

PLAINTIFF'S COMPLAINT

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- 3. Defendant regularly conducts business in the State of Michigan, thus, personal jurisdiction is established.
  - 4. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2).

## **PARTIES**

- 5. Plaintiff is a natural person residing in Westland, Michigan 48185.
- 6. Plaintiff is a "person" as that term is defined by 47 U.S.C. §153(39).
- 7. Defendant is a "person" as that term is defined by 47 U.S.C. § 153(39).
- 8. Defendant is a corporation with its principal place of business located at 950 Forrer Boulevard, Kettering, Ohio 45420.
- 9. Defendant acted through its agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.

## **FACTUAL ALLEGATIONS**

- 10. Plaintiff has a cellular telephone number that she has had for at least one year.
  - 11. Plaintiff has only used this phone as a cellular telephone.
- 12. Beginning in or about May 2015 and continuing thereafter, Defendant placed repeated telephone calls to Plaintiff's cellular telephone number.
  - 13. Defendant contacted Plaintiff daily, sometimes multiple times per

day.

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Plaintiff knew that Defendant was using an automated telephone 15. dialing system because the calls would begin with a recording or pre-recorded

Defendant used an automatic telephone dialing system, automated

voice prior to speaking to one of Defendant's representatives.

message and/or prerecorded voice when contacting Plaintiff.

- 16. Defendant's telephone calls were not made for "emergency purposes."
- Desiring to stop the repeated telephone calls, Plaintiff spoke with 17. Defendant's agents to advise them that she no longer wanted to be contacted on her cellular telephone and to stop calling her in or around May 2015.
- 18. Once Defendant was aware that its calls were unwanted and to stop, there was no lawful purpose to continue making further calls, nor was there any good faith reason to place calls.
- However, Defendant refused to update its records to restrict telephone 19. calls to Plaintiff's cellular telephone despite Plaintiff's repeated instruction to stop calling.
- Undaunted by Plaintiff's demands to cease calling, Defendant 20. continued to call Plaintiff on her cellular telephone an excessive number of times per day through in or about 2015 or 2016.

- 21. It was frustrating, annoying and distressing for Plaintiff to receive such continuous and repeated telephone calls from Defendant on her cellular telephone, especially since Defendant's calls would interrupt her while attending church functions, teaching class and while recuperating from an illness in the hospital in 2015.
- 22. After Defendant ignored Plaintiff's multiple requests and continued to call her repeatedly and continuously without her consent, she turned to downloading a blocking application to her cellular telephone to ultimately stop Defendant's harassing calls.
- 23. Upon information and belief, Defendant conducts business in a manner which violates the TCPA.

## DEFENDANT VIOLATED THE TELEPHONE CONSUMER PROTECTION ACT

- 24. Plaintiff incorporates the forgoing paragraphs as though the same were set forth at length herein.
- 25. Defendant initiated multiple automated telephone calls to Plaintiff's cellular telephone number.
- 26. Defendant's initiated these automated calls to Plaintiff using an automatic telephone dialing system.

- 27. Defendant repeatedly placed non-emergency calls to Plaintiff's cellular telephone.
- 28. Under § 227(b)(3)(A) of the TCPA, a person or entity may bring a private cause of action in an appropriate court based on a violation of the TCPA or the regulations prescribed under the TCPA to enjoin such violation.
- 29. Under § 227(b)(3)(B) of the TCPA, a person or entity may bring a private cause of action in an appropriate court "to recover for actual monetary loss from such a violation, or to receive \$500 in damages for each such violation whichever is greater."
- 30. Based upon the conduct of Defendant, Plaintiff avers that the enhancement of damages provided for by the TCPA allowing for Plaintiff to recover up to \$1,500 per call/violation be applied to calls placed.
- 31. Defendant's conduct violated § 227(b)(1)(A)(iii) of the TCPA by placing repeated calls using an automatic telephone dialing system to Plaintiff's cellular telephone.
- 32. Defendant's calls to Plaintiff's cellular telephone after she revoked consent were not made with Plaintiff's prior express consent.
- 33. Defendant's acts as described above were done with malicious, intentional, willful, reckless, wanton and negligent disregard for Plaintiff's rights under the law and with the purpose of harassing Plaintiff.

	34.	The	acts	and/or	omissions	of	Defendant	were	done	unfairly
unlawfully, intentionally, deceptively and fraudulently and absent bona fide error										
lawf	ul right	, legal	l defe	nse, legal	l justificatio	n or	legal excuse	·.		

35. As a result of the above violations of the TCPA, Plaintiff has suffered the losses and damages as set forth above entitling Plaintiff to an award of statutory, actual and trebles damages.

## PRAYER FOR RELIEF

WHEREFORE, Plaintiff, LISA WALKER, respectfully prays for a judgment as follows:

- a. All actual damages suffered pursuant to 47 U.S.C. § 227(b)(3)(A);
- b. Statutory damages of \$500.00 per violative telephone call pursuant to 47 U.S.C. § 227(b)(3)(B);
- c. Treble damages of \$1,500.00 per violative telephone call pursuant to 47 U.S.C. §227(b)(3);
- d. Injunctive relief pursuant to 47 U.S.C. § 227(b)(3); and
- e. Any other relief deemed appropriate by this Honorable Court.

**DEMAND FOR JURY TRIAL** PLEASE TAKE NOTICE that Plaintiff, LISA WALKER, demands a jury trial in this case. RESPECTFULLY SUBMITTED, Dated: May 5, 2017 By: /s/ Amy L. Bennecoff Ginsburg Amy L. Bennecoff Ginsburg, Esq. Kimmel & Silverman, P.C. 30 East Butler Pike Ambler, PA 19002 Phone: (215) 540-8888 Facsimile: (877) 788-2864 Email: aginsburg@creditlaw.com 

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